



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Structural Analysis Technologies, Inc.

File: B-228020

Date: November 9, 1987

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### DIGEST

1. The purpose of requirement in Bid Protest Regulations that protester serve procuring agency with a copy of its protest within 1 day of filing with the General Accounting Office is to inform the agency promptly of the basis of protest to enable it to prepare its report within 25 working days. When, as here, the delay in service is minor and does not prevent the agency from submitting a timely report, we will not dismiss the protest on this basis.

2. Procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and their evaluations will not be disturbed unless shown to be arbitrary or in violation of procurement laws or regulations. A mere disagreement between the protester and the agency over the technical evaluation is not sufficient to show that the evaluation was unreasonable.

3. Where a proposal is considered acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of it that received less than the maximum possible score. It is not the agency's responsibility to help a firm whose proposal, although acceptable, simply is not the best one in the competition to bring the proposal up to the level of other higher ranked proposals.

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### DECISION

Structural Analysis Technologies, Inc. (SAT) protests the award of a contract to Hughes Aircraft Company under request for proposals (RFP) No. F30602-87-R-0148, issued by the Air Force for development of computer programs to assess reliability of wafer scale integration (WSI) devices. We deny the protest.

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The RFP called for fixed-price offers and provided for award to the offeror who could perform the contract in a manner most advantageous to the government, considering the following factors, listed in descending order of importance: technical factors, price, offeror's technical qualifications and past performance. Five proposals were received by the March 30, 1987, closing date. After the initial technical evaluation, only the proposals of Hughes, priced at \$562,362, and SAT at \$304,128, were found to be technically acceptable. Accordingly, the contracting officer included those two firms in the competitive range and rejected the other three proposals. With regard to the most important evaluation criterion, technical factors, Hughes' proposal was rated twice as high as SAT's proposal.

Oral and written discussions then were conducted with SAT and Hughes. A June 5 letter from the contracting officer to SAT informed the firm of a number of issues raised during negotiations that the firm should consider in preparing its best and final offer (BAFO). Referring to SAT's technical proposal, the letter stated that the "reliability method" proposed by SAT was considered feasible, but that its use posed a higher risk as compared to more established methods. With respect to the firm's price proposal, among other items, the letter asked the firm to substantiate its proposed computer, word processing and reproduction costs by submitting proposed hourly rates and hours of usage. The letter also stated that SAT's consultant staffing was extremely low; the staffing for one key task, writing the computer program, should be approximately doubled; the proposed computer time should be approximately tripled and redistributed; the proposal did not provide for travel to current WSI contractors (although the agency estimated that two such trips would be necessary); and finally, the proposal did not include a resume for the individual filling one key position.

BAFOs were submitted on June 10, as requested, with Hughes' price reduced to \$498,416, and SAT's price increased to \$453,576. The Air Force's technical personnel determined that the proposal revisions did not alter the initial relative technical ranking of the two offers under which Hughes had been rated twice as high as SAT. The Air Force also determined that the 10 percent price differential between the two firms was not sufficient to overcome the technical superiority of Hughes' proposal. As a result, award was made to Hughes on June 26. SAT then filed a protest with the Air Force, which was denied, and later protested to our Office on August 5.

As a preliminary matter, the Air Force contends that the protest should be dismissed since SAT did not furnish a copy

of the protest to the contracting officer within 1 day after filing the protest with our Office as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1987). The purpose of that requirement is to inform procuring agencies promptly of the basis of protest and to enable them to prepare their reports within the 25 working days allotted by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(b)(2)(A) (Supp. III 1985). Southwest Marine of San Francisco, Inc., B-224508, Oct. 2, 1986, 86-2 CPD ¶ 388. In this case, since SAT initially filed an agency-level protest, the Air Force already was on notice of basis of the protest. In addition, the agency received a copy of the protest to our Office from SAT only 2 working days late. Since the delay was minor and did not prevent the agency from submitting a timely administrative report, we will not dismiss the protest on this basis. AAA Engineering and Drafting, Inc., et al., B-225605, May 7, 1987, 87-1 CPD ¶ 488.

SAT argues that it should have received the award because it offered a lower price than Hughes and, according to the protester, it offered the most effective and reliable technical approach and the best possible team of outside consultants and other personnel. SAT says that during negotiations, contracting officials did not cite any defects or weaknesses in its technical proposal except the unsupported allegation that its approach involved more risk than other possible approaches. According to SAT, since there were no defects in its technical proposal, it is inconsistent for the Air Force to now argue that Hughes' proposal was superior. SAT also argues that the contracting officials acted unfairly by first advising SAT to increase its price, and later relying on its increased price as a justification to deny the firm the award.

SAT also complains that the Air Force improperly refused its requests for a detailed debriefing regarding the basis for award to Hughes and has not provided it with portions of the procurement record provided to our Office, including the evaluation points assigned to the two proposals, a comparison of its proposal with that of Hughes and a copy of the Hughes proposal. Under CICA, 31 U.S.C. § 3553(f), agencies are required to release to an interested party only those relevant documents that would not give the party a competitive advantage and that the party is otherwise authorized by law to receive. Nevertheless, consistent with our practice, we have reviewed and based our decision on the entire record, not merely those portions that have been provided to the protester. Bell Technical Operations Corp., B-225819, et al., May 21, 1987, 87-1 CPD ¶ 534. With respect to a debriefing, the Air Force says that it explained to SAT the basis for the award and released to the firm all information

that can be released to an unsuccessful offeror in a debriefing. In this regard, contrary to SAT's apparent expectations, contracting agencies are not required to disclose in debriefings details of other offerors' proposals or their relative standing. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.1003(b) (1986).

SAT's principal contention is that it should have received the award because it offered a lower price and, according to the protester, its proposal was superior to that of Hughes. It is not the function of our Office to independently evaluate the merits of technical proposals, but rather, to review whether an evaluation was unreasonable, inconsistent with the solicitation's evaluation criteria, or in violation of procurement laws or regulations. Martin Advertising Agency, Inc., B-225347, Mar. 13, 1987, 87-1 CPD ¶ 285. The overall determination of the relative desirability and adequacy of technical proposals is primarily a function of the procuring agency, which enjoys a reasonable degree of discretion in evaluating them. Orange State Consultants, B-223030, July 15, 1986, 86-2 CPD ¶ 69.

After examining the record in its entirety, we find that the Air Force's evaluation was reasonable and consistent with the solicitation's evaluation criteria. As explained, the contracting officials considered SAT's proposed technical approach feasible although it also was believed to pose a higher risk of satisfactory completion than other approaches. It is clear from the record that the Air Force's principal concern regarding SAT's proposal related to the staffing and other resources proposed by the firm, which, in the Air Force's view, were inadequate for successful performance. Specifically, the contracting officials questioned the firm's proposed workhours, particularly the hours for engineering consultants and high-level SAT employees, as well as the firm's word processing hours, computer time and typing and reproduction estimates.

Although these issues were raised during discussions, SAT did not resolve the agency's concerns in its BAFO. For instance, the contracting officer informed SAT that its initial proposal of 160 consultant hours in the critical areas of reliability prediction and failure analysis was extremely low and that approximately 3,000 staffhours would be needed in these areas. In its BAFO, however, SAT only increased its proposal to 496 staffhours. In this respect, although SAT maintains that its proposal is superior as a result of the excellent credentials of its outside consultants and staff engineers, the firm did not, in the opinion of agency technical evaluators, commit these individuals for sufficient hours to assure the success of the firm's proposed approach. Also, although contracting officials

suggested that the firm triple its proposed computer time, SAT did not increase its computer time nearly as much as recommended. While SAT continues to argue without further elaboration that it proposed sufficient staffhours in all areas and sufficient computer time for the project, SAT's mere disagreement with the judgment of contracting officials as to staffing and other resources is not sufficient to show the agency's evaluation was unreasonable. Kollmorgen Corp., B-221709.5, June 24, 1986, 86-1 CPD ¶ 580.

We also reject SAT's contention that it should have received the award because of its lower price. In negotiated procurements, unless the solicitation so specifies, there is no requirement that the award be based on lowest price; rather, the contracting agency has discretion to select a higher-rated, higher-priced proposal if doing so is consistent with the evaluation scheme and is deemed worth the difference in cost. Service Ventures, Inc., B-221261, Apr. 16, 1986, 86-1 CPD ¶ 371. Under the solicitation here, price was second to technical considerations among the evaluation factors in relative order of importance. In making award to Hughes, the Air Force determined that the technical superiority of Hughes' proposal outweighed the 10 percent difference in price between the two proposals. Since the price/technical tradeoff was consistent with the solicitation's evaluation scheme and SAT has not shown that it was unreasonable, we see no basis to object to the selection of Hughes' higher-priced proposal. CACI, Inc.-Federal, B-225444, Jan. 13, 1987, 87-1 CPD ¶ 53.

We also reject SAT's contentions regarding the adequacy of the discussions held with the firm. The protester argues, in this respect, that contracting officials were required to advise it, before the submission of its BAFO, of all defects in its technical proposal that justified rating the firm's proposal lower than that of Hughes. According to the protester, in the absence of such a detailed listing, the agency cannot now argue that Hughes' proposal was superior.

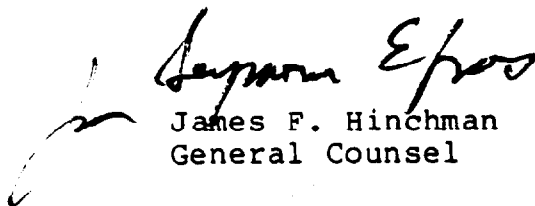
The content and extent of discussions in a given case are matters of judgment primarily for determination by the agency involved and are not subject to question by our Office unless they lack a reasonable basis. Bauer of America Corp. & Raymond International Builders, Inc., A Joint Venture, B-219343.3, Oct. 4, 1985, 85-2 CPD ¶ 380. Contrary to SAT's contention, there is no requirement that agencies conduct all-encompassing discussions. Information Network Systems, B-208009, Mar. 17, 1983, 83-1 CPD ¶ 272. Where, as here, a proposal is considered acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of it that has received less than the

maximum possible score. ADP Network Services, Inc.,  
B-200675, Mar. 2, 1981, 81-1 CPD ¶ 157.

As discussed above, the agency's primary concern with SAT's proposal related to the staffing and resources the firm proposed to dedicate to the project. In our view, these concerns were adequately explained to SAT during discussions. Further, the relative merit of the protester's technical proposal as compared to Hughes' proposal was not an appropriate issue for discussion during negotiations with SAT and there was no requirement that the firm be advised of how it could bring its proposal up to the level of Hughes. See FAR, 48 C.F.R. § 15.610(d); Martin Advertising Agency, Inc., B-225347, supra.

SAT also argues that it increased its price in its BAFO only after contracting officials repeatedly insisted that it do so, and that the Air Force then unfairly relied on its increased price to deny the firm the award. In our view, the record does not reflect an agency request that SAT raise its price; rather, during discussions contracting officials suggested that SAT increase the staffing and resources that it proposed. Although SAT increased its price because its own costs increased as a result of the increased staffing and resources it proposed, the decision to do so was purely a business decision on SAT's part. Moreover, the increase in SAT's price was not the critical factor in its failure to receive the award; rather, as discussed above, the award decision was based on the significant superiority of Hughes' technical proposal which, in the Air Force's view, justified Hughes' higher price.

The protest is denied.

  
James F. Hinchman  
General Counsel